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April 28, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
AD/CVD Enforcement Group III

SUBJECT: Issues and Decision Memorandum for the Final Results of
the First Administrative Review of the Antidumping Duty
Order on Honey from the People's Republic of China

Summary

We have analyzed the comments and rebuttal comments of interested parties in the first administrative review of the antidumping duty order on honey from the People's Republic of China (PRC) (A-570-863). As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this review for which we received comments from the interested parties:

- Comment 1: Costs Incurred by Zhejiang on Certain U.S. Sales
- Comment 2: Costs Associated with Shipping Honey Samples to U.S. Customers
- Comment 3: Surrogate Value Source for Raw Honey
- Comment 4: Calculation of Inflatons for the Raw Honey Surrogate Value
- Comment 5: Surrogate Source for Factory Overhead, Selling, General and Administrative (SG&A), and Profit Ratios
- Comment 6: Deduction of Bank Fees from U.S. price
- Comment 7: Exclusion of Certain Import Data in Calculating Certain Surrogate Values

Background

We published in the *Federal Register* the preliminary results of the first administrative review on December 16, 2003. *See Notice of Preliminary Results of First Administrative*

Antidumping Duty Review: Honey from the People's Republic of China, 68 FR 69988 (December 16, 2003) (*Preliminary Results*).

The period of review (POR) is February 10, 2001, through November 30, 2002. We invited parties to comment on our *Preliminary Results*. We received case briefs from the respondent, Zhejiang Native Produce and Animal By-Products Import & Export Corp. a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (Zhejiang), and the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), on January 21, 2004.¹ We received rebuttal briefs from the same parties on January 27, 2004.² On January 28, 2004, we held a public hearing for this review.

Changes Since the *Preliminary Results*

1. Calculation of Inflatons for the Raw Honey Surrogate Value - *See* Comment 4 below.
2. Deduction of bank charges paid to PRC and U.S. banks by Zhejiang from reported gross unit U.S. selling prices. *See* Comment 6 below.
3. We also adjusted the surrogate value for labor to reflect the updated PRC regression-based wages calculated by the Department. *See* Import Administration's internet home page (<http://ia.ita.doc.gov/wages/index.html>), Expected Wages of Selected NME Countries, revised in September 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a PRC regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2002*, International Labour Office (Geneva: 2002), Chapter 5B: Wages in Manufacturing and GNP data as reported in World Development Indicators, The World Bank, (Washington, DC: 2003). *See* Final FOP Memo at 2 and Attachments 1 and 4.

For our analysis of the above-mentioned changes to the preliminary margin calculation, *see* Memorandum to the File regarding Analysis of the Data Submitted by Zhejiang Native Produce and Animal By-Products Import & Export Corp. a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (Zhejiang) in the Final Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China (April 28, 2004) (Final Analysis Memo) and Memorandum to the File regarding Final Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China; Factors of Production Valuation (April 28, 2004) (Final FOP Memo).

¹ On January 28, 2004, Zhejiang submitted a letter of objection to new factual information contained in petitioners' rebuttal brief. Per the Department's letter dated February 13, 2004, petitioners re-filed their rebuttal brief on February 18, 2004.

² In their rebuttal brief dated January 28, 2004, petitioners alleged that Zhejiang had submitted new factual information in its case brief. *See* Petitioners' Rebuttal Brief re-filed on February 18, 2004 at 2. Per the Department's letter dated February 13, 2004, Zhejiang re-filed its case brief on February 18, 2004.

Discussion of the Issues

Comment 1: Costs Incurred by Zhejiang on Certain U.S. Sales

Petitioners claim that the Department should include in its final analysis freight and marine insurance expenses associated with four sales made by Zhejiang during the POR that were subsequently returned. According to petitioners, Zhejiang incurred freight and marine insurance expenses to ship these sales from the PRC to the United States. However, petitioners assert that Zhejiang did not include these sales in its U.S. sales database nor did Zhejiang account for associated movement expenses. Thus, petitioners argue that the Department should include Zhejiang's freight and marine insurance expenses associated with these sales in its final analysis.

Respondent notes that two of the four returned sales in question were shipped on a free on-board (FOB) basis, and therefore, Zhejiang did not incur movement expenses on those sales. For the two returned sales that were not FOB, respondent asserts that Zhejiang's outbound freight and marine insurance expenses were directly related to the two returned sales, and as such, were properly not reported. Respondent argues that there is no basis to assign direct expenses incurred on incomplete sales to Zhejiang's sales that were completed, and appropriately, included in its U.S. sales database.

Department's Position:

The Department agrees with Zhejiang that it appropriately did not report any freight and marine insurance expenses for four returned sales in its U.S. sales database. In reaching this conclusion, we note that the movement expenses at issue are expenses that bear a direct relationship to the returned sales. As such, these direct expenses should not be assigned to other sales in Zhejiang's U.S. sales database. We further note that Zhejiang properly excluded the four return sales from its U.S. sales database.

Specifically, Zhejiang adhered to the Department's requirements for reporting its sales quantity. *See* the Department's February 20, 2003, questionnaire at C-11, in which, we requested Zhejiang to "[r]eport the sale quantity for this transaction. In general, this quantity will be the quantity of the specific shipment or invoice line, net of returns where possible" (emphasis-added). It is the Department's established practice to disregard returned sales in its margin analysis. *See, e.g., Final Results of Antidumping Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan*, 69 FR 5960 (February 2, 2004) and accompanying Issues and Decision Memorandum at 23 (Comment 1); *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea*, 57 FR 53693 (November 12, 1992) at 53702 (Comment 10).

At verification, we reviewed documentation substantiating Zhejiang's claim that the sales in question were returned, and therefore, properly not included in its U.S. sales database. *See* Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales Information Submitted by Zhejiang Native Produce & Animal By-Products Import & Export Group Corporation (a.k.a. Zhejiang Native Produce and Animal By-Products Import &

Export Corp.) (Zhejiang) and Factors of Production Information Submitted by Zhejiang's Unaffiliated Supplier dated September 26, 2003 (Zhejiang Verification Report) at 13-14.

Therefore, for all reasons stated above, and because the freight and marine insurance expenses associated with the returned sales bear no direct relationship to completed sales reported in Zhejiang's U.S. sales database, the Department will continue to exclude freight and marine insurance expenses associated with these sales in its final analysis.

Comment 2: Costs Associated with Shipping Honey Samples to U.S. Customers

Petitioners argue that the Department should treat costs (such as shipping and preparation) associated with samples shipped by Zhejiang to U.S. customers as movement charges. According to petitioners, during verification the Department obtained information on the international express mail charges for honey samples sent to U.S. customers during the POR. Thus, petitioners contend that the Department should treat as movement expenses all of the costs associated with samples sent by Zhejiang to a particular U.S. customer because these costs were incurred to deliver honey samples to those customers.

In rebuttal, respondent claims that expenses associated with providing samples are indirect, and therefore, included in the surrogate selling, general and administrative expense (SG&A) ratio. In support of its claim, Zhejiang cites the *Final Results of Antidumping Duty Administrative Reviews of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 62 FR 52043, 54069 (October 17, 1997) (*Antifriction Bearings*) and accompanying Issues and Decision Memorandum at Comment 2.

Additionally, citing *Honey from Argentina*, respondent contends that the Department determined, in that case, to treat testing and sampling expenses as indirect expenses. See *Antidumping Investigation of Honey from Argentina; Notice of Final Determination of Sales at Less Than Fair Value*, 66 FR 50611 (October 4, 2001) (*Honey from Argentina*) and accompanying Issues and Decision Memorandum at Comment 14. Moreover, respondent notes that the Department has determined that expenses associated with samples purchased from another producer are indirect expenses. See *New Shipper Reviews of Tapered Roller Bearings and Parts Thereof, Finish and Unfinished, from the Peoples Republic of China; Final Results*, 67 FR 10665 (March 8, 2002) and accompanying Issues and Decision Memorandum at Comment 7 ("we believe that any selling expenses that may have been associated with this purchase of the sample from Peer's affiliated supplier are accounted for in the indirect selling expense ratio, as revised by the Department.").

Department's Position:

We agree with respondent that expenses incurred on samples shipped to Zhejiang's U.S. customers are more properly classified as indirect selling expenses, and therefore, should not be treated as movement expenses, but rather captured in the surrogate SG&A ratio. During verification, the Department found that Zhejiang sent samples of honey to U.S. customers for

previously negotiated transactions and in general as “a professional courtesy and to address {chloramphenicol} CAP concerns.” See Zhejiang’s Verification Report at 14. In accordance with section 351.410(c) of the Department’s regulations, generally, direct selling expenses include “expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.”

Because samples Zhejiang sent to its U.S. customers during the POR do not bear a direct relationship to any particular sale, we find that expenses associated with these sales are indirect selling expenses, and not movement expenses.³ Accordingly, it is the Department’s practice to classify expenses associated with product samples sent to U.S. customers as indirect expenses. See *Honey from Argentina* and accompanying Issues and Decision Memorandum at Comment 14 “we have determined that we should treat the cost of zero-priced samples as an indirect selling expense respondents incurred in the general promotion of sale.”

In accordance with the Department’s precedents, samples, whether purchased or sent free-of-charge (as in the instant case) to U.S. customers, are not included in our margin analysis. See, e.g., *Final Results of Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom*, 67 FR 55780 (August 30, 2002) and accompanying Issues and Decision Memorandum at 99 (Comment 57). In summary, the Department determines that expenses associated with samples of honey sent to customers in the United States by Zhejiang are indirect selling expenses accounted for in the surrogate SG&A ratio, and therefore, will not be deducted from reported gross unit U.S. selling prices in these final results.

Comment 3: Surrogate Value Source for Raw Honey

Respondent claims that the Department should use raw honey prices mentioned in the newspaper article, “Honey No Longer a Sweet Business,” published on March 6, 2001 in the *Tribune of India* (March 2001 *Tribune* article). Respondent notes that according to the March 2001 *Tribune* article, “the production cost of honey in India is near Rs. 23 per kg and the procurement price is only Rs. 24.” See Zhejiang’s July 3, 2003, submission at Exhibit 3. First, respondent asserts that this article is preferable because it is contemporaneous with the POR, unlike the article, also from the *Tribune of India*, entitled, “Apiculture, a major foreign exchange earner,” published on March 1, 2000 (March 2000 *Tribune* article), which the Department relied upon in the preliminary results.⁴

Secondly, respondent argues that the March 2001 *Tribune* article refers to honey prices throughout India, and is not “limited to raw honey prices in the Northern part of India,” as the Department stated in the *Final Results of the New Shipper Review of the Antidumping Duty Order on Honey from the People’s Republic of China*, 68 FR 62053 (October 31, 2003) (*Wuhan*

³ Furthermore, for those few samples sent pursuant to sales contracts, we determine that because the samples were not actually sold to the U.S. customers, the expenses associated with their shipping and preparation should also be treated as indirect selling expenses.

⁴ The March 2000 *Tribune* article was later republished in *The Agricultural Tribune* on May 1, 2000. See *Preliminary Results* at 69993.

Final Results) and accompanying Issues and Decision Memorandum at Comment 2. According to respondent, the Department's conclusion that it "appears" that Dr. Gill's pricing information was "limited to raw honey prices in the Northern part of India, rather than countrywide honey prices" is completely contradicted by the record. Respondent contends that the Department ignored Dr. Gill's statement that the pricing information he provided related to prices "in India" and substituted its own speculation and assumption in order to reach a conclusion, which inflated the antidumping margin for Wuhan.

Respondent notes that the Department's March 2000 *Tribune* article mentions the Kanyakumari district in Tamil Nadu five times. The March 2000 *Tribune* article, respondent claims, cites "sources at the beekeepers co-operative society" for much of its information, in the context of a discussion regarding the availability of "natural resources" in Kanyakumari. Respondent contends that the use of the term "the" when discussing the beekeepers co-operative indicates that the article was focused on only one co-operative in India (e.g., the Coorg's Honey Producers' Co-operative, the Mahableshwar Honey Producers Cooperative). As such, respondent claims that the Department should be consistent in that the March 2000 *Tribune* article also "appears" to be limited to prices in one region of India. Respondent asserts that such a conclusion highlights that the Department's criticism of the March 2001 *Tribune* article is baseless and cannot be supported by substantial evidence.

Thirdly, respondent argues that the Department incorrectly interpreted the March 2001 *Tribune* article, in the statement that it was not clear whether the article refers to Indian honey sourcing or honey sourced from the PRC, Argentina, Germany or Australia. See *Wuhan Final Results* and accompanying Issues and Decision Memorandum at Comment 2. Respondent asserts that Dr. Gill's point regarding price depression caused by imports only makes sense if the price range of the imports (Rupees (Rs.) 20 to 25 per kilogram (kg.)) is contrasted with the procurement prices "in India" (Rs. 24/kg.). According to respondent, this reading is consistent with Dr. Gill's point (and the title of the article "Honey No Longer a Sweet Business") since it demonstrates that imported honey could undercut Indian honey by up to Rs. 4/kg. Respondent states that the Department's alternative reading that Dr. Gill may be discussing import prices in the whole paragraph renders Dr. Gill's point meaningless when it is put into context. Respondent asserts that the Department cannot twist the facts in such a way as to make the article nonsensical simply to reach a particular conclusion that inflates the resulting antidumping margin. The Department's speculation that Dr. Gill might be discussing prices of imports rather than prices for Indian honey, respondent claims, runs contrary to the evidence.

Finally, respondent argues that the Department's conclusion in *Wuhan Final Results* that the March 2001 *Tribune* article was "internally inconsistent" because the article identifies imports from the PRC, Argentina, Germany, and Australia, while Indian import statistics provided by petitioners did not show imports from the PRC, Argentina, and Germany is incorrect. Respondent claims that the Department ignored official export statistics from the PRC and Germany submitted by Wuhan Bee Healthy Co., Ltd. (respondent in that previous proceeding of honey), which showed shipments of honey from those countries to India during the period preceding the March 2001 *Tribune* article. Moreover, respondent contends that the Department's conclusion with respect to Wuhan that it had "concerns as to the reliability and quality" of the March 2001 *Tribune* article was based on a series of findings that are simply

contradicted by the record in that new shipper review. *See Wuhan Final Results* and accompanying Issues and Decision Memorandum at Comment 2. In that instant case, respondent argues that the Department's rejection of the March 2001 *Tribune* article regarding its reliability and quality was based on mischaracterizations of the facts.

Respondent asserts that the March 2001 *Tribune* article is contemporaneous with the POR in the instant review. Respondent claims that this is an objective basis that makes the March 2001 *Tribune* article superior to the March 2000 *Tribune* article. Respondent states that the Department should therefore follow its past precedent favoring contemporaneous information over information that is not contemporaneous. Thus, respondents urge the Department to use the March 2001 *Tribune* article for the final results herein.

In rebuttal, petitioners assert that Zhejiang's arguments regarding the reliability and quality of the March 2001 *Tribune* article fail to discredit the Department's analysis and findings in *Wuhan Final Results* that the March 2001 *Tribune* article "contains internal inconsistencies that undermine its reliability." *See Wuhan Final Results* and accompanying Issues and Decision Memorandum at Comment 2. With respect to Zhejiang's claim that the March 2001 *Tribune* article is preferable because it is contemporaneous with the POR, petitioners contend that, while the March 2001 *Tribune* article was more contemporaneous in the Wuhan proceeding, the Department rejected the article because it contained internal inconsistencies that undermined its reliability.

Petitioners assert that the Department's reading of the March 2001 *Tribune* article is reasonable given that the individual who provided the pricing information, Dr. Madhu Gill, is chairperson of the Northern India Beekeepers Association. *See Zhejiang's July 7, 2003, submission at Exhibit 3.* Given Dr. Gill's position, petitioners contend that it is not unreasonable for the Department to assume that Dr. Gill is referring to honey prices in the region in which he has actual knowledge and experience, Northern India. Petitioners note that, otherwise, Dr. Gill's ability to provide probative information is immediately called into question. Petitioners claim that Zhejiang provides nothing more than an unsubstantiated, alternative reading of the information in the March 2001 *Tribune* article. Petitioners argue that because Zhejiang's claims are not corroborated by any other record evidence they should, therefore, be dismissed.

Furthermore, petitioners contend that the Department should dismiss Zhejiang's arguments regarding the Department's findings that the March 2001 *Tribune* article contained internal inconsistencies because these arguments are based on late-submitted new factual information. However, petitioners note that even if the Department were to consider the late-submitted new factual information, it would not provide a sufficient basis for the Department to reject or amend its prior findings.

In conclusion, petitioners argue that Zhejiang has failed to provide any information or arguments showing that the analysis set forth in *Wuhan's Final Results* and its accompanying Wuhan Decision Memo was erroneous. As such, petitioners claim that the Department should affirm its *Preliminary Results* and continue to value raw honey in the final results based on the March 2000 *Tribune* article.

Nevertheless, petitioners state that if the Department finds that the raw honey price contained in the March 2000 *Tribune* article is not an appropriate surrogate, the Department should value raw honey in the final results based upon a simple average of the POR-contemporaneous pricing information reported by 13 Indian producers and consumers of raw honey. Specifically, petitioners submitted POR-specific information on prices at which raw honey is sold and purchased by Indian producers and consumers of raw honey reported by the following Indian producers and consumers of raw honey: (1) the National Bee Board; (2) Kejriwal Enterprises Ltd.; (3) Dr. R.C. Mishra, an authority on beekeeping in India and honorary executive director of the National Bee Board; (4) Honavar Bee Keeper and Village Industries Cooperative Society Ltd.; (5) Mr. Arvind Singh Chauham; (6) Mr. Dev Vrat Sharma of Shiv Gramodhyog Sansthan; (7) Ambrosia Apiaries; (8) South Karnara Bee Keepers Cooperative Ltd.; (9) the Tiwana Bee Farm; (10) the Jallowal Bee Farm; (11) the Mahabaleshwar Honey Producers Cooperative; (12) the Coorg Honey and Wax Producers Cooperative; and (13) the Khadi and Village Industries Commission. Petitioners claim that these pricing data are preferable because they: (1) represent prices throughout the various honey-producing regions in India; (2) are of a higher quality than either *Tribune* of India article; and (3) are contemporaneous with the POR.

Department's Position:

The Department disagrees with respondent. As explained below, the Department continues to value raw honey using the prices reflected in the article published in the March 2000, *Tribune of India*, an Indian newspaper, in the final results of this review. See Attachment 1 of Final FOP Memo for further details.

In the *Preliminary Results*, we valued raw honey using an average of the highest and lowest price for raw honey, adjusted for inflation, stated in an article published in *The Tribune of India* on March 1, 2000, entitled, "Apiculture, a major foreign exchange earner" (later republished in *The Agricultural Tribune* on May 1, 2000).⁵ In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the data. See, e.g., *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) (*Garlic from the PRC*) and accompanying Issues and Decision Memorandum at Comment 6. As further noted in *Garlic from the PRC*, the Department prefers, whenever possible, to use countrywide data, and only resort to company-specific information when countrywide data is not available. In addition, the Department prefers to rely on publicly-available data. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001) and accompanying Issues and Decision Memorandum at Comment 2.⁶

⁵ We note that this methodology was established in *Wuhan Final Results*.

⁶ The use of publicly-available information from a single surrogate country is preferable to the use of data from a single producer because data from a single producer tends to be less representative of the cost of that input in the

In accordance with its established practice and consistent with previous proceedings, the Department determines that the March 2000 *Tribune* article is a quality and reliable surrogate value source for the raw honey input on the record of this review, and therefore, will continue to rely upon the pricing information therein for these final results. In selecting the pricing information from the March 2000 *Tribune* article as the most appropriate surrogate value to represent raw honey prices in India, the Department reasons that the raw honey pricing data in this article is the best quality data because (1) it is published, publicly-available data; (2) it was “intended to serve the Indian agribusiness community;” and (3) it is representative of the beekeeping honey industry throughout India. Thus, the information in this article has “greater credibility” than would a similar article published only as a “general interest” article, or only providing information specific to a particular region of India.

With regard to specificity, we find that the March 2000 *Tribune* article specifically addresses the “sale price” of raw honey “by beekeepers in India.” See Memorandum to the File through Abdelali Elouaradia, Factors of Production Valuation for Zhejiang Native Produce and Animal By-Products Import & Export Corp. a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation’s (Zhejiang’s) Unaffiliated Suppliers dated December 10, 2003 (Preliminary FOP Memo) at Attachment 3 (page 3). In other words, the raw honey values listed in the March 2000 *Tribune* article were derived from actual sale prices of raw honey in India.

Finally, with regard to contemporaneity, we note that the March 2000 *Tribune* article is not contemporaneous with the POR, however, the Department finds that contemporaneity is not the exclusive factor governing the Department’s decision. See *Final Determination of Sales at Less Than Fair Value; Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002) (*Steel Wire Rod from Ukraine*) and accompanying Issues and Decision Memorandum at Comment 1. However, in accordance with the Department’s practice, we applied inflators to adjust the raw honey surrogate value in time in order to make it contemporaneous to the POR (see Comment 4 below for details on our calculation of inflators). See *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 67 FR 46173 (July 12, 2002) and accompanying Issues and Decision Memorandum at Comment 8 (“[T]he purpose of using inflators is to adjust surrogate values that are outside the POR so that they become values which are applicable during the POR.”).

Therefore, for all the reasons discussed above, we find that the surrogate value information from the March 2000 *Tribune* article offers the most accurate and reliable information for purposes of calculating Zhejiang’s normal value pursuant to section 351.408(c)(4) of the Department’s regulations. The March 2000 *Tribune* article constitutes the most reliable source on the record, and is a publicly-available article printed in a widely-distributed and established Indian newspaper, the *Tribune of India*. As explained above, because the data itself is the most representative of raw honey prices in India, and is quality data that is specific to the sale of raw honey by the beekeeping industry in India, the Department determines

surrogate country. See *Preamble to Department’s Regulations, Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) at 31 – 32.

that it has relied upon the “best available information” on the record of this review in valuing the raw honey input.⁷

Consistent with *Wuhan Final Results*, we reject respondent’s March 2001 *Tribune* article as the best available surrogate with which to value the raw honey because the March 2001 *Tribune* article (1) contains internal inconsistencies that undermine the reliability and quality of the raw honey pricing information therein; (2) appears to represent prices from one region of India; and (3) is not supported or corroborated by the data submitted by respondent in support of the information in the March 2001 *Tribune* article.

Specifically, in *Wuhan Final Results*, we were not persuaded by respondent’s argument that the Department should use the price data contained in the March 2001 *Tribune* article solely because it was contemporaneous with the POR. As explained in *Wuhan Final Results* and as noted above, while contemporaneity is one factor considered by the Department in selecting a suitable surrogate value, it is not the exclusive factor governing the Department’s decision. See *Wuhan Final Results*. See also *Steel Wire Rod from Ukraine* and accompanying Issues and Decision Memorandum at Comment 1.

Although respondent’s article was published in the same quality publication as the article relied upon by the Department in the *Preliminary Results*, respondent’s later article contains internal inconsistencies that undermine its reliability. In particular, we noted in *Wuhan Final Results*, that the March 2001 *Tribune* article identified imports from “China, Argentina, Germany, [and] Australia . . .” as the cause for the decrease in Indian honey production and prices; however, this information contradicted Indian import data submitted by petitioners in that proceeding. See *Wuhan Final Results* and accompanying Issues and Decision Memorandum at 18-19 (Comment 2). In the instant case, there is no new information that compels an adjustment to these findings. Therefore, we continue to have those same concerns as to the reliability and quality of respondent’s price data from the March 2001 *Tribune* article.

Moreover, we noted in *Wuhan Final Results* that the pricing information from the March 2001 *Tribune* article appears to represent prices from only one region of the country (*i.e.*, northern India), rather than countrywide raw honey prices. In affirming this finding, we note that Dr. Gill is chairperson of the Northern India Beekeepers Association, and that the article only references areas located in northern India.⁸ Therefore, when given a choice between data that appears to be representative of one particular region of India, rather than the entire country, the Department prefers to rely on the countrywide, quality data provided by the March 2000 *Tribune* article. See *Garlic from PRC* and accompanying Issues and Decision Memorandum at Comment 6.

⁷ In reaching these final results, we complied with the stated preference under the regulation because we relied upon publicly-available data to value the raw honey input, which was not producer-specific. Moreover, the principle of selecting “published” data has further been upheld by the CIT. See *Union Camp Corp. v. United States*, 941 F. Supp. 108,116 (CIT 1996).

⁸ Specifically, we note that the article only references Punjab, Himachal Pradesh, and Haryana. Each of these areas are located in the northern part of India.

Finally, we note that respondent submitted raw honey rates from the Khadi Gramodhyog Project (Indian Government); Mahalaxshi Khadi Gramodhyog Institution in Saharanput (Project letter), in order to corroborate its raw honey price of Rs. 24 per kg.⁹ See Zhejiang's July 17, 2003, submission at Exhibit E. However, the unsigned Project letter dated May 8, 2003, does not explain how or where the quoted raw honey rate information was derived. This document only provides what respondent claims is a "list price" for raw honey. There are no facts demonstrating that this information is based on quality data, or is in any way specific to the sale price of raw honey in India. Therefore, the Department determines that the raw honey rates from the Project letter are not quality and reliable data, and do not corroborate the raw honey pricing information from the March 2001 *Tribune* article.

Accordingly, for reasons discussed above, we find that respondent's March 2001 *Tribune* article does not represent the best available information with which to value the raw honey input in these final results.

With regard to respondent's rebuttal argument that the March 2000 *Tribune* article also "appears" to be limited to prices in one region of India (Tamil Nadu in southern India), the Department notes that the fact that the March 2000 *Tribune* article simply refers to Tamil Nadu several times does not call into question the quality and reliability of the source and the raw honey pricing information therein.¹⁰ The article's author refers to Tamil Nadu in the context that it ranks first in honey production among the southern states of India; which provides a foundation for the author's discussion on the honey experience in this area of the country. We also note that further into the March 2000 *Tribune* article the author discusses the "present trend in the bee keeping industry . . ." and subsequently states that, "Punjab, Haryana, Uttar Pradesh, Bihar, and West Bengal are the major honey-producing states" (located in Northern India). Therefore, the pricing information from the March 2000 *Tribune* article appears to be based on a broad range of honey producing areas throughout India, including major honey producing areas in the north and south.¹¹

With respect to the surrogate information provided by petitioners, consistent with our finding in *Wuhan Final Results*, we continue to find that petitioners' individual pricing data is, for the most part, derived from undocumented pricing or cost information quoted by companies or contained in an unsubstantiated market research study prepared by petitioners.¹² Importantly, when faced with a choice between unsubstantiated company-specific data selected by one party on the one hand, and countrywide publicly-available data on the other hand, the Department prefers to rely on publicly-available data when selecting surrogate values. Because petitioners' data, for the most part, consists of undocumented pricing/cost information derived from unsubstantiated market research and we have better data, we have not used petitioners' data. See

⁹ We note that Saharanput is also located in northern India, Uttar Pradesh.

¹⁰ We note that any references to "cooperative" are at the beginning of the March 2000 *Tribune* article in which it appears the author relied upon information from beekeepers cooperative societies to better understand its role in the beekeeping industry.

¹¹ See March 2000 *Tribune* article (stating "[t]he sale price of honey by beekeepers in India varies from Rs 25 to Rs 45 per kg . . ."). As noted above, the article indicates that honey is produced in several areas throughout India, including Punjab, Haryana, Uttar Pradesh, Bihar, West Bengal, Tamil Nadu, Kerala, and Karnataka.

¹² We note that only four out of the 13 surrogate value sources provided by petitioners are documented.

Yantai Oriental Juice Co. v. United States, Slip Op 02-56 at 11, 26 CIT (June 18, 2002) (*Yantai Oriental*).

Comment 4: Calculation of Inflators for the Raw Honey Surrogate Value

According to respondent, the Department's conclusion that the monthly price increases exhibited by the Tiwana and Jallowal data was "somewhat reflective" of countrywide pricing trends is entirely unsupported. The Department failed to explain how the Tiwana and Jallowal data is both "specific to only two honey processors in a particular region of India" but at the same time "reflective" of price trends in India, the Department's use of those companies' data to artificially "inflate" the prices in the March 2000 *Tribune* article was contrary to law. Respondent contends that the pricing data from Tiwana and Jallowal is either usable or not usable, and cite *Yantai Oriental*, which remanded the Department's rejection of the HPMC financial data for valuation of the surrogate ratios while relying on that same company's data for purposes of valuing the principal raw material in that case. Therefore, respondent argues that if the Department uses the March 2000 *Tribune* article, it should remove the second inflator from its calculations of a contemporaneous raw honey value. Respondent claims that because the Department did not accept information relating to prices during the POR (because the Department found them to be company-specific), the Department does not have usable information to conclude whether the Tiwana and Jallowal data is reflective of countrywide prices.

Moreover, respondent contends that the Tiwana and Jallowal data represent only six months out of the 22 month POR, and therefore, the Department lacks the information to determine whether price increases during the six-month period are representative of price increases during the 22 month POR.

Additionally, respondent asserts that the Department was incorrect in adding a second inflator (in addition to the wholesale price index (WPI) inflator) for two reasons, (1) the Department calculated a November 2002 raw honey price rather than an average honey price for the entire POR, and (2) it is inconsistent with the Department's stated reason to depart from its standard inflation methodology (*i.e.*, significant price increases in the principal raw material during the POR). Respondent argues that the Department should not have inflated the raw honey surrogate value to the November 2002 value. Rather, respondent believes that the Department should calculate normal values on a monthly basis in order to avoid overstating the dumping margins at the beginning of the POR, and understating them at the end of the period. Respondent notes that a monthly calculation is important because Zhejiang's weighted-average gross selling prices increased by over 46 percent during the POR.

Respondents cite *Heavy Forged Hand Tools* as precedent for calculating different normal values within a single period. See *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 60 FR 49251, 49253 (September 22, 1995), in which the Department stated, "[w]ith respect to respondents' arguments that the surrogate values do not reflect the period January-March 1992 and were not adjusted to reflect that period, and that production of

the subject merchandise took place prior to the period covered by the import statistics, we have changed our calculations for the final results to use 1991 surrogate values for production which occurred in 1991, and 1992 surrogate values for production which occurred in 1992.” Respondent also cites the Statement of Administrative Action Agreement (SAA), which states that “when costs are rapidly changing, it may be appropriate to use shorter periods, such as quarters or months, which may allow a more appropriate association of costs with sales prices.” See SAA on Implementation of Article 6 of the GATT at 173.

According to respondent, the Department routinely calculates monthly costs in market-economy cases in order to avoid distortions caused by hyperinflation. See *Silicomanganese From Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 61185, 61187 (October 27, 2003) (“in order to avoid the distortive effect of inflation in our comparison of costs and prices, we requested SIBRA/CPFL submit the product-specific cost of manufacturing (COM) incurred during each month of the period for which it reported home-market sales.”). Respondent notes that the Department calculated the Indian raw honey price increase to be 26 percent from February 2001 to November 2002. Respondent further notes, therefore, that the Department classifies a market-economy as experiencing high inflation when the annual inflation rate exceeds 25 percent. Accordingly, respondent argues that the distortion of Indian raw honey prices is equivalent to the distortion that would cause the Department to calculate monthly costs in a market-economy case. See *Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from South Korea*, 64 FR 137, 139 (January 4, 1999); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73170 (December 29, 1999). In the instant case, respondent asserts that this adjustment is especially warranted since Zhejiang’s weighted-average gross selling prices increased by over 46 percent from February 2001 to September 2002. Using a single honey price for this entire period would not reflect these price increases and would result in the kind of mismatch between costs and prices envisioned in the SAA as “inappropriate” and would artificially inflate Zhejiang’s antidumping margin. For the foregoing reasons, respondent argues that if the Department continues to apply the extra 23 percent increase to the source price for honey due to “significant” price changes during the POR starting in December 2001, then the Department should calculate monthly raw honey costs in order to ensure that Zhejiang’s margin is not distorted by reason of a timing mismatch between the raw material costs and Zhejiang’s selling prices.

In rebuttal, petitioners assert that the Department’s raw honey inflation methodology is reasonable because of the record evidence that shows a significant increase in raw honey prices in India during the POR. Additionally, petitioners claim that the pricing data used by the Department as an indicator of rising raw honey costs in India during the POR (*i.e.*, pricing data from two India raw honey producers) is corroborated by evidence on the record of this review. Thus, petitioners argue that using the raw honey inflation methodology and secondary pricing information on which the methodology is based is in accordance with law and should be affirmed in the final results. However, where the Department “is presented with secondary information, to the extent practicable, it is required to corroborate that information in order to evaluate its probative value.” See *Yantai Oriental* at 11.

In particular, petitioners claim that the record demonstrates that there was a sharp increase in raw honey prices during the POR. Using data obtained from two raw honey suppliers in India, Tiwana and Jallowal, as an example, petitioners assert that raw honey prices increased by over 50 percent during the period December 2001, through May 2002. *See* Petitioners' July 7, 2003, submission at Exhibit 1. Petitioners contend that the price increases experienced by these two companies are consistent with prices obtained by petitioners from raw honey suppliers and consumers that show similar price increases during the period from February 2001, through November 2002.

Indeed, petitioners argue that, the probative value of the pricing data from Tiwana and Jallowal (*i.e.*, the secondary information) is corroborated by POR-specific information on prices at which raw honey was sold and purchased by 13 Indian producers and consumers of raw honey. Thus, the record evidence, according to petitioners, establishes that the Department's raw honey cost increase methodology and the secondary pricing information on which the methodology is based are in accordance with the law.

Additionally, petitioners contend that Zhejiang's statement that "the Department has no usable information on the record with which to compare the monthly pricing series for Tiwana and Jallowal," is misleading and erroneous because the Department did not find the prices submitted by petitioners to be "unusable" or otherwise invalid or flawed. Rather, the Department's analysis of the prices was in the context of its surrogate value selection criteria.

Petitioners note that the inflation methodology uses the pricing data from Tiwana and Jallowal to inflate the raw honey surrogate value during the six-month period for which the Department had the more specific data (*i.e.*, December 2001, through May 2002). The Department, according to petitioners, estimated the rate of raw honey cost increases in all months for which it did not have pricing data specific to raw honey using the WPI. Specifically, petitioners assert that the Department's inflation methodology does not reflect the raw honey price in November only, as Zhejiang contends. Rather, petitioners argue that the Department calculated an average value that is reflective of the inflation that occurred during the entire period from the date of the March 2000 *Tribune* article. Petitioners claim that this inflation methodology is consistent with the Department's standard methodology for inflating prices using the WPI.

Contrary to Zhejiang's argument that the Department should calculate monthly normal values in order to prevent distorted dumping calculations, petitioners argue that the Department does not possess pricing data specific to raw honey throughout the entire POR as claimed by Zhejiang. Rather, petitioners noted that the only pricing data on the record that are specific to raw honey are the Tiwana and Jallowal data from the period December 2001 to May 2002. In light of the limited data, petitioners assert that the Department reasonably estimated the increase in raw honey prices during the POR using all available information regarding inflation in India in general and inflation in the raw honey market in particular. This approach, petitioners argue, is consistent with the Department's standard methodology and rationale for inflating surrogate value in non-market economy (NME) cases.

Lastly, petitioners claim that the Department's methodology in *Heavy Forged Hand Tools from the PRC* does not support Zhejiang's claim that the Department should calculate monthly normal values due to the increase in honey costs during the POR. In that case, petitioners note, the Department relied on surrogate values from both before and during the period of review, because production of the subject merchandise exported to the United States occurred within the POI. Thus, consistent with the Department's standard practice, petitioners assert that the Department should base the normal value on a surrogate value that reflects an average of the costs during the POR.

Department's Position:

Consistent with our finding in *Wuhan Final Results*, we continue to find that some of petitioners' raw honey pricing information is based on documented raw honey pricing information. However, the documented raw honey purchase prices from Tiwana and Jallowal are specific only to two honey processors in a particular region of India (Punjab), and thus, do not fairly represent quality, countrywide data to be used for purposes of establishing the underlying surrogate raw honey values. See *Wuhan Final Results* and accompanying Issues and Decision Memorandum at Comment 2. Moreover, as discussed above, we find that the Tiwana and Jallowal pricing information are not the best information available to the Department with which to value the raw honey input because of the limited coverage of the data. Therefore, in accordance with Department's practice and our decision in *Wuhan Final Results*, we are not relying on the company-specific raw honey pricing information reflective of the experience of entities in a particular region of India submitted by petitioners for purposes of calculating raw honey surrogate values. See, e.g., *Garlic from PRC* and accompanying Issues and Decision Memorandum at Comment 6; *Final Results of the Antidumping Duty Administrative Review on Synthetic Indigo from the People's Republic of China*, 68 FR 53711 (September 12, 2003) and accompanying Issues and Decision Memorandum at Comment 7.

However, as noted in our *Preliminary Results*, we cannot ignore the significant rate at which Tiwana's and Jallowal's documented raw honey purchase costs increased for the period December 2001, through May 2002. We note that these documented raw honey purchase prices increased at such a rate that these increases would not be appropriately reflected in the Department's application of Indian wholesale price indices (WPI) to inflate the average raw honey value from the March 2000 *Tribune* article to a supposed POR equivalent. Therefore, in order to account for these significant raw honey price increases and consistent with our finding in *Wuhan's Final Results*, we find it appropriate and necessary to inflate the average raw honey price derived from pricing information in the March 2000 *Tribune* article, using these documented purchase prices.

In the *Preliminary Results*, we based our raw honey surrogate value on a simple average of all raw honey pricing information from the March 2000 *Tribune* article. In other words, the Department took the highest and lowest values (*i.e.*, Rs. 25 to Rs. 45) from the March 2000 *Tribune* article, and then calculated a simple average of the raw honey prices (*i.e.*, $(25 \text{ Rs.} + 45 \text{ Rs.})/2 = 35 \text{ Rs. per kg.}$). The Department's use of this "simple average" methodology to value

countrywide raw honey surrogate values is rational and reasonable.¹³ We then inflated the average raw honey price from the March 2000, *Tribune* article (i.e., Rs. 35 per kg.) to December 2001 by dividing the Indian WPI average for February 2001, through December 2001 by the Indian WPI for March 2000. See *Wuhan Final Results* and accompanying Issues and Decision Memorandum at Comment 2. Next, we calculated monthly price increases on a percentage-basis, and then applied these price increases (percentage) to our adjusted raw honey price from the March 2000, *Tribune* article. Then, we calculated a simple average of these adjusted monthly raw honey prices to derive our raw honey surrogate value for the period for which we had raw honey purchase pricing data (i.e., December 1, 2001, through May 31, 2002). In order to make this value fully-contemporaneous to the POR, we further adjusted the raw honey surrogate value for inflation by the average WPI for the period June 2002, through November 2002 by the Indian WPI for May 2002. Lastly, we converted the raw honey value from a per kg.-basis to a per metric ton-(MT) basis. See Preliminary FOP Memo at Attachments 2 and 3.

Based on the comments we received, we have revised this methodology in these final results. Because the POR of this review covers 22 months, in addition to the above inflator calculation, we also have adjusted the raw honey value to reflect inflation for the periods in which we do not have specific data using Indian WPI. See Final FOP Memo at Attachment 2 for further details. However, as noted by Zhejiang, the Department in its *Preliminary Results* did not properly calculate an average raw honey value for the entire POR in accordance with our intended inflation methodology. Specifically, we did not properly calculate an average raw honey value for the POR; rather, we calculated a raw honey value that only represented the last month of the POR (i.e., November 2002). Therefore, we have adjusted our methodology in these final results in order to calculate a raw honey value representative of the entire POR. Specifically, we summed the adjusted raw honey prices for three different periods of time within the POR and then divided this sum by the number of periods to reach an average raw honey value for the POR (i.e., $37.48 + 47.04 + 48.16 = 132.67/3 = 44.23$ Rs. per kg.). See Final FOP Memo for further details.

Respondent argues that the Department should calculate normal values on a monthly basis in the instant case to avoid hyperinflation distortions caused by our inflation calculation methodology.¹⁴ Although, in some instances, the Department has calculated monthly normal values to account for hyperinflation, we find that this methodology is limited to market economy cases and not relevant to NME methodology. In any event, because the average raw honey value for the POR, calculated above, represents all 22 months of the POR, we do not find it necessary to calculate normal values on a monthly-basis as suggested by respondent.

¹³ The March 2000 *Tribune* article does not specify whether any particular portion of the price range is associated only with beekeepers in a particular region of India, or whether the entire range of raw honey prices reflects a range of honey prices in all of the honey producing regions. Absent evidence to the contrary, we assume that the range of the surrogate prices are equally representative of the surrogate experience. See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19039 (April 30, 1996) (*Bicycles from the PRC*). Finally, due to the variability of the raw honey prices in India, and in order to fairly capture the variability of these prices, we must consider the entire range of the pricing information. Thus, using either end of the range (i.e., Rs. 25 or Rs. 45) without knowing the underlying reason for the difference between the high and low values would be distortive of countrywide prices, and therefore, is unreasonable.

¹⁴ As stated above, Zhejiang asserts that the Department's preliminary inflation calculation of the raw honey value increased at a rate of 26 percent, thereby, resulting in hyperinflation (inflation that exceeds 25 percent).

Comment 5: Surrogate Source for Factory Overhead, Selling, General and Administrative (SG&A), and Profit Ratios

Respondent argues that the Department should use Mahabaleshwar Honey Producers Cooperative's (MHPC's) financial statement for April 2002 – March 2003, because it corresponds to the period during which the Department concluded there were significant price increases in the price of raw honey. According to respondent, under the Department's methodology, the raw honey prices increased starting in December 2001 to reach levels for the last 12 months of the period that were 20 percent higher than the raw honey prices in the beginning of the period. In effect, respondent claims that the raw material prices from this later period had a significant and disproportionate impact on the ultimate margin calculated for Zhejiang. Respondent notes that the 2001-2002 MHPC financial statement covers only four months of this period, while MHPC's 2002-2003 financial statement covers eight months. For this reason, respondent argues that use of the 2002-2003 financial statement would be consistent with the manner in which the Department valued the primary raw material at issue in this case. Respondent states that MHPC's financial experience in 2002-2003 presumably reflects the higher raw material prices the Department concluded were prevalent during that later period. Therefore, respondent asserts that the Department should use the 2002-2003 MHPC financial statement for the final results herein.

Petitioners contend that Zhejiang's assumption that the Department will or should select financial ratios, which reflect a surrogate company's entire production experience, based on changes in the cost of a single input over the POR is flawed. Petitioners note that while significant changes in an input's cost may warrant adjustments when valuing the input in order to construct normal value,¹⁵ the propriety of such input-specific adjustments cannot be extrapolated to the selection of surrogate financial ratio. According to petitioners, doing so would improperly base the Department's selection of surrogate financial ratios on a single input, rather than the company's overall production experience as required by the statute and the Department's regulations. *See* section 771(c) of the Act; 19 CFR 351.408(c)(4).

Petitioners assert that in the context of the Department's surrogate value selection criteria, it should continue to rely upon MHPC's 2001-2002 financials. Petitioners claim that assuming that the quality and specificity of the data in the 2001-2002 and the 2002-2003 financials are equal, MHPC's 2001-2002 financials provide data that are entirely contemporaneous with the POR, and thus, should be preferred over data that are based on a fiscal year that is not contemporaneous for eight out of the 12 months. Therefore, because the MHPC 2001-2002 financial statement is fully contemporaneous, whereas, the 2002-2003 financials are largely not contemporaneous, petitioners argue that the Department should continue to use MHPC's 2001-2002 financials for the final results of this review.

¹⁵ Petitioners note that the Department adjusted the raw honey surrogate value in order to consider the significant changes in the raw honey input's cost in the *Preliminary Results*. As discussed above, petitioners assert that the Department's raw honey valuation methodology was not unreasonable in the context of this review, though petitioners maintain that the surrogate value data presented by petitioners provide a stronger and preferable basis for raw honey valuation that is equally or more consistent with the Department's surrogate value selection methodology.

Department's Position:

We agree with petitioners that the 2001-2002 MHPC financial statements are the better source for the surrogate financial ratios in this review. Under our NME methodology, it is the Department's established practice in selecting surrogate data with which to value the factors-of-production (including financial ratios) to consider the quality, specificity, and contemporaneity of such data. *See Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 3887 (January 27, 2004) (*THFA from the PRC*) at 3892. As discussed below, we find that the 2001-2002 MHPC financial statements are the best available information for valuing financial ratios (*i.e.*, factory overhead, SGA, and profit) based on their quality, specificity, and contemporaneity.

Because MHPC is in the business of buying raw honey from its members and selling processed honey to its customers, we find that MHPC's financial statement is specifically reflective of the production experience of an Indian honey producer. Moreover, as noted in *Wuhan Final Results*, MHPC's financial statements are narrowly tailored to subject merchandise, and do not include a wider range of other products. This allows for the Department to more accurately calculate the surrogate financial ratios. Thus, consistent with our findings in *Wuhan Final Results*, we find that MHPC's 2001-2002 financial statements are quality and reliable data.

With regard to contemporaneity, MHPC's accounting period is April through March for any given year. *See* the Department's Preliminary FOP Memo at Exhibit 10. In the *Preliminary Results*, the Department relied upon MHPC's 2001-2002 financial statements to calculate the surrogate financial ratios for Zhejiang for the period of April 2001, through March 2002. *See Preliminary Results* at 69993. Thus, the MHPC 2001-2002 financial statement is more contemporaneous to the POR because it represents 12 POR-months, whereas, the MHPC 2002-2003 financial statement (provided by respondent) only represents the company's production experience for eight months out of the 22 month POR.

For the reasons stated above, we find that MHPC's 2001-2002 financial data meet the criteria relied on by the Department in selecting appropriate Indian surrogate data with which to value financial ratios. Therefore, in accordance with section 773(c)(1)(B) of the Act, we determine that MHPC's 2001-2002 financial statements are the best available information on the record of this review. Accordingly, we continue to rely on MHPC's 2001-2002 financial statements in calculating the surrogate ratios for Zhejiang's factory overhead expenses, SG&A expenses, and profit in these final results.

As noted above, respondent argues that the Department should use MHPC's 2002-2003 financial statement because it reflects the higher raw honey prices that the Department concluded were prevalent during December 2001, through May 2002. However, respondent's argument is not persuasive. First, as noted above, MHPC's 2002-2003 financial statement is less contemporaneous for the entire POR than the MHPC 2001-2002 financial statement used by the Department. Second, respondent's assertion that we should calculate our surrogate SG&A ratio to more closely correspond to the time period when raw material prices increased is incorrect. As noted by petitioners, to do so would improperly weight the surrogate financial ratios

according to a single input, and not the surrogate company's experience as a whole.¹⁶ It is not the Department's practice to base our selection of a source with which to calculate surrogate financial ratios on a single input. In applying section 351.408(c)(4) of our regulations, we have consistently relied on the experience of "producers of identical or comparable merchandise in the surrogate country." Accordingly, we have continued to rely upon MHPC's 2001-2002 financial statements to calculate the surrogate financial ratios in these final results.

Comment 6: Deduction of Bank Fees from U.S. price

Respondent argues that the Department should not deduct bank charges paid by Zhejiang to PRC banks from reported gross-unit U.S. selling prices, because MHPC's financial statements include "bank commissions." Respondent asserts that it is not the Department's practice to deduct bank fees paid to non-market economy banks. *See Final Results of the Administrative Review of Cut-to-Length Carbon Steel Plate from Romania – August 1, 1998 through July 31, 1999*, 66 FR 2879 (January 12, 2001) (*Romanian Plate*) and accompanying Issues and Decision Memorandum at Comment 7b. ("We agree with respondent that the bank charge should not be deducted from United States price. The bank charge at issue is a selling expense because it is an expense incurred incidental to delivering the merchandise to the customer. We have accounted for selling expenses in the calculation of SG&A included in NV. Therefore, in these final results, as in the preliminary results, we have not made a deductions for the bank charge.").

Petitioners assert that the Department correctly combined the bank charges reported by Zhejiang in fields NMEBANKU and MKTBANKU of its U.S. sales database into one field (BANKU) and subtracted the amount in the BANKU field from reported U.S. prices. Petitioners rebut Zhejiang's claim that the Department should not deduct bank charges paid to NME banks, because the surrogate financial ratios already include an amount for "bank commissions" in India. Because the charges in question were incurred exclusively for Zhejiang's U.S. export sales, while MHPC's surrogate SG&A ratio represents expenses incurred for home market sales in India, petitioners claim that the deduction of bank charges does not involve double-counting.

Moreover, petitioners contend that whether or not it is the Department's practice to make circumstances-of-sale adjustments in NME cases is irrelevant to this issue, because the Department deducted the bank charges from the U.S. price rather than make a circumstance-of-sale adjustment to normal value. Therefore, petitioners maintain that the Department properly deducted the bank charges incurred in U.S. dollars because the charges resulted in a sale-specific reduction to the U.S. dollar amount Zhejiang actually received for its individual U.S. sales. *See Analysis Memorandum for the Preliminary Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China dated December 10, 2003 at 3.* Petitioners argue that the Department should, therefore, continue to subtract all U.S. dollar bank charges from Zhejiang's U.S. prices in its final analysis.

¹⁶ In any event, we note that the Department's methodology for calculating the overall SG&A amount already adequately considers any such increases in the raw honey input costs because the Department calculates a total SG&A amount by multiplying the SG&A ratio by the raw honey value. *See Preliminary FOP Memo at 6 and Attachment 10.*

Department's Position:

The Department agrees with respondent that it inappropriately deducted charges Zhejiang incurred and paid to PRC banks in our calculation of net U.S. prices. It is the Department's practice in NME cases to treat incurred bank charges, including those paid in market-economy currency to either NME or market-economy banks, as a "selling expense because it is an expense incurred incidental to delivering the merchandise to the customer." See *Romanian Plate* and accompanying Issues and Decision Memorandum at Comment 7b. Because the Department considers banks fees to be selling expenses, normally, we would treat such expenses as a circumstance-of-sale (COS) adjustment to normal value. However, in NME cases, the Department "does not make COS adjustments, other than constructed-export price expense adjustments, because of our inability to make equivalent adjustments to NV." See, e.g., *Final Results of Antidumping Duty Administrative Review; Porcelain-on-Steel Cooking Ware from the People's Republic of China*, 65 FR 31144 (May 16, 2000) and accompanying Issues and Decision Memorandum at Comment 4; and *Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19031 (April 30, 1996). Accordingly, we have not deducted bank charges paid to PRC or U.S. banks from gross unit U.S. selling prices reported by Zhejiang. See *Final Analysis Memo* at 2.

Comment 7: Exclusion of Certain Import Data in Calculating Certain Surrogate Values

Respondent claims that the Department must make a specific finding for each raw material input that the Department has excluded from the surrogate value calculation due to non-specific export subsidies. Citing *Fuyao Glass*, respondent argues that the Court of International Trade (the Court) remanded the Department's decision to exclude market purchases of float glass from Korea, Thailand, and Indonesia because all exports from these countries may benefit from non-specific export subsidies. See *Fuyao Glass Industry Group Co., Ltd v. United States*, Slip Op. 03-169 (December 18, 2003) (*Fuyao Glass*), in which the Court stated, "[n]one of the more than 80 countervailing duty determinations cited by Commerce concerning Korean subsidies involved float glass, the product at issue in this case, not for that matter did any of the countervailing duty determinations involve glass of any kind." Consistent with the *Fuyao Glass* opinion, in the instant case, respondent contends that the Department must "point to particular and specific evidence" from which it would be reasonable to believe or suspect that each specific raw material input may be subsidized. See *Fuyao Glass* at 23. Therefore, respondent argues that if the Department continues to use Indian import data to value coal and paint, it should make a specific finding relating past subsidies to coal and paint exports, or else include imports from Indonesia, Thailand, and Korea in accordance with the *Fuyao Glass* opinion.¹⁷

Petitioners assert that the Department excluded data from Indonesia, Thailand, and Korea when calculating surrogate values for coal and paint because of potential distortion due to non-specific export subsidies. See *Preliminary FOP Memo* at 3 and 6.

¹⁷ Respondent claims that in *Wuhan Final Results*, the Department rejected this argument without addressing the court cases cited by the new shipper in that proceeding. Notwithstanding, respondent notes that the *Fuyao Glass* opinion was issued after the Department's *Wuhan Final Results* and thus, the judicial precedent has changed since the Department's decision in *Wuhan Final Result*.

Petitioners agree with respondent that *Fuyao Glass* requires the Department to reconsider its determination in that case and, as appropriate, describe particular and specific evidence supporting its reason to believe or suspect that (1) subsidy programs are available to all importers and (2) the inputs at issue benefit from non-specific export subsidies available. *See Fuyao Glass* at 22-23. Petitioners assert that Zhejiang relies too heavily on this case, however, which provides a questionable reading of the Department's practice, and which arises in the context of an apparently inadvertent misstatement by the Department of its practice in this area. Moreover, petitioners note that proceedings related to *Fuyao Glass* are not final. The Department, according to petitioners, is presently in the midst of a redetermination on remand, following which opportunity for further comment and possible appeal will be available to the parties.

Petitioners explain that the Court read the Department's use of the words "are subsidized" instead of "may be subsidized" as explicit adoption by the Department of a higher standard than that set forth in legislative history. Petitioners note that the Court, thus, held the Department to its articulated, higher standard. *See Fuyao Glass* at 20 n.16 and 24. According to petitioners, the Court's reasoning is contrary to the Department's established practice as defined in *Automotive Glass from the PRC* in which the Department clearly articulated the correct "reason to believe or suspect" standard that defines its practice in this area in the same paragraph in which it found that its prior determinations supported a finding of actual subsidization. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) (*ARG from the PRC*) and accompanying Issues and Decision Memorandum at Comment 1.

Petitioners assert that the Department's reliance on and accurate description of prior factual administrative determinations concerning subsidization (*i.e.*, that subsidies did exist and were used) does not indicate that the legal standard has changed. According to petitioners, *ARG from the PRC* properly describes the Department's practice, by which the Department will omit information on imports from Thailand, Korea, and Indonesia in its surrogate value calculations based upon its determination that those governments provide distortive, non-specific export subsidies to companies conducting business in those three countries. Particularly, petitioners state that because the Department identified broadly available export subsidy programs maintained by Indonesia, Thailand, and Korea, as a matter of administrative regulation and procedure, the Department may properly take notice of and rely on these prior factual findings in support of its determination to exclude distortive surrogate values from these countries in valuing coal and paint. Petitioners claim that the Department did not adopt a more demanding legal standard in *ARG from the PRC*, but actually and unmistakably rejected the notion that the statute required it to make a specific finding of subsidization. The Department, petitioners note, specifically pointed out that the legislative history directs the Department not to conduct a formal investigation, but to "base its decision on information that is generally available to it at the time of making its decision." *ARG from the PRC* Issues and Decision Memo at Comment 1.

Indeed, petitioners assert that in other recent PRC cases the Department has properly articulated and applied its standard and practice in this area. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 68 FR 27530 (May 20, 2003) and accompanying Issues and Decision Memorandum at 11 (Comment 5) ("We determined in three countervailing duty cases that during the 1990s the

Government of Korea (GOK) maintained various export subsidy programs that were broadly available and not industry specific, such as short-term export financing, reserve for export losses, reserve for overseas market development, investment tax credits, *etc.* It is reasonable to infer that Suzhou's supplier may have taken advantage of the broadly available, non-industry specific, export subsidies maintained by the GOK during the 1990s. In fact, we believe it is reasonable to infer that it would have done so.”) (footnote and citations omitted).

Petitioners argue that there is no basis for the Department to deviate from its past policy and practice of excluding import data from countries that provide exporters with non-industry specific subsidies that the Department has previously found to distort factor value calculations, because (1) *ARG from the PRC* properly provided the relevant legal standard, and (2) the Department's established practice in this area has not been changed by the agency or overruled by the Court. As such, petitioners state that the Department's exclusion of data from these countries in valuing paint and coal was consistent with its past practice regarding these countries, and therefore, proper. In the final results of this review, petitioners assert that the Department should avail itself of the opportunity to clearly restate its practice and policy concerning exclusion of input prices from countries that maintain broadly-available, non-industry-specific export subsidies, and affirm the methodology applied in the *Preliminary Results*.

Department's Position:

In these final results, we continue to exclude Indian imports from Indonesia, Thailand, and Korea from our surrogate value calculations of coal and paint. In accordance with legislative history regarding NME methodology, the Department shall avoid using import data from the above-listed countries because we have reason to believe or suspect that such data may reflect broadly available, non-industry specific export subsidies. *See Omnibus Trade and Competitiveness Act of 1988*, Conference Report to Accompany H.R. 3, H. Report No. 578, 100th Cong., 2nd Sess. at 590-591, 1988 U.S. Code and Adm. N. 1547,1623 (1988) (legislative history) stating that the Department “shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices. However, the conferees do not intend for Commerce to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intended that Commerce base its decision on information generally available to it at the time.” This legislative history indicates that the Department need not conduct a formal investigation to determine whether prices are dumped or subsidized as alleged by respondent. Consistent with this principle, we disregard prices that may be distorted or aberrational in order to ensure accuracy. *See Antidumping Duties, Countervailing Duties; Final Results*, 62 FR 27295, 27366 (May 19, 1997) (responding to comments regarding valuation of the factors of production in NME cases).

As noted in *Wuhan Final Results*, it is the Department's standard practice when relying on import data for surrogate valuation to exclude import data from Indonesia, Korea, and Thailand on the basis that such data may reflect broadly-available, non-industry specific export subsidies. *See Wuhan Final Results* and accompanying Issues and Decision memorandum at Comment 6, citing *ARG from the PRC*. As further explained in *ARG from the PRC*, each of these countries maintains broadly available, non-industry specific export subsidies that may benefit all exporters to all markets. *See ARG from the PRC* and accompanying Issues and

Decision Memorandum at Comment 1. Based on this finding, we have a reason to believe or suspect that Indian imports of coal and paint from Indonesia, Korea, and Thailand may be subsidized, and we have excluded them from our calculation.

We disagree with respondent's arguments that the *Fuyao Glass* decision compels us to reach a different decision in the instant proceeding. First, we note that the Court in *Fuyao Glass* did not reject the Department's application of its *ARG from the PRC* subsidy suspicion policy. In fact, the Court stated that, "in light of Commerce's broad discretion in selecting surrogate values for factors of production . . . the Court finds that Commerce's decision to avoid subsidized prices is reasonable and, accordingly, defer[ed] to it." See *Fuyao Glass*, Slip Op. 03-169 at 15-16. Moreover, as correctly noted by petitioners, proceedings related to the *Fuyao Glass* decision are not yet final. The Department recently filed a redetermination pursuant to remand in that case, and submitted arguments concerning the appropriate standard to be applied by the Department when making such decisions.

In any event, we note that the underlying reasoning of the *Fuyao Glass* decision is distinguishable from our instant proceedings. In *Fuyao Glass*, the Court required the Department to provide additional evidence to sustain its rejection of potentially subsidized prices because the Court determined that the Department had applied a higher standard in that case.¹⁸ Any such higher standard determined by the Court to exist in the *Fuyao Glass* proceedings does not exist in the instant proceedings. Therefore, the Department has not changed or revised its reason to believe or suspect standard, in these proceedings nor has this standard practice been overruled by the Court. See, e.g., *THFA from the PRC* at 3892; *Preliminary Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 69 FR 5127, (February 3, 2004) at 5131.

Accordingly, for all the reasons discussed above, we continue to omit import data from Indonesia, Korea, and Thailand from our surrogate value calculations for certain factors of production (*i.e.*, coal and paint) in these final results pursuant to the Department's established practice.

¹⁸ In *Fuyao Glass*, the Department said, in its determination, that it had a reason to believe or suspect that prices "are" subsidized. The Court interpreted this language to mean the Department had established a higher standard for itself, and looked to whether the record supported a finding of subsidies in fact as opposed to a reason to believe or suspect. See *Fuyao Glass*, 2003 Ct. Int'l Trade Lexis, 171, 31, footnote 16.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final antidumping margin and the final results of this review in the *Federal Register*.

Agree

Disagree

James J. Jochum
Assistant Secretary
for Import Administration

Date